

House File 430 - Introduced

HOUSE FILE 430

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A BILL FOR

1 An Act relating to areas established as fruit-tree or forest
2 reservations for the purpose of a property tax exemption by
3 requiring the erection or maintenance of partition fences
4 to restrain livestock, and including effective date and
5 applicability provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 169C.6, Code 2015, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 4. The owner or owners of an area shall not
4 be granted a property tax exemption as a fruit-tree or forest
5 reservation under section 427C.12 for the period of a habitual
6 trespass or during the period that an order issued under this
7 section is outstanding.

8 Sec. 2. Section 350.4, Code 2015, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 11. To determine whether an area qualifies
11 under chapter 427C as a fruit-tree or forest reservation
12 eligible for a property tax exemption pursuant to section
13 427C.12.

14 Sec. 3. Section 359A.8, Code 2015, is amended to read as
15 follows:

16 **359A.8 Orders.**

17 1. All orders and decisions made by the fence viewers shall
18 be in writing, signed by at least two of them, and filed with
19 the township clerk.

20 2. The owner or owners of an area shall not be granted a
21 property tax exemption as a fruit-tree or forest reservation
22 under section 427C.12 for the period that an order issued under
23 this chapter is outstanding.

24 Sec. 4. Section 359A.22, Code 2015, is amended to read as
25 follows:

26 **359A.22 ~~Controversies~~ Fence viewers — duties.**

27 1. Upon the application of either owner, after notice is
28 given as prescribed in this chapter, the fence viewers shall
29 determine all controversies arising under sections 359A.18 to
30 359A.21, inclusive, including the partition fences made sheep
31 and swine tight.

32 2. Upon request by a county assessor or county conservation
33 board pursuant to section 427C.12, subsection 2, the fence
34 viewers shall determine whether the owner or owners of an area
35 have participated in erecting and maintaining a partition fence

1 as required in this chapter.

2 Sec. 5. Section 427C.10, Code 2015, is amended to read as
3 follows:

4 **427C.10 Restraint of livestock and limitation on use.**

5 1. Cattle, horses, mules, sheep, goats, ostriches, rheas,
6 emus, and swine Livestock as defined in section 169C.1 shall
7 not be permitted upon a fruit-tree or forest reservation. The
8 owner or owners of an area that may be or have been granted a
9 property tax exemption as a fruit-tree or forest reservation
10 under this chapter must participate in erecting and maintaining
11 a partition fence as provided in section 427C.12.

12 2. Fruit-tree and forest reservations shall not be used for
13 economic gain other than the gain from raising fruit or forest
14 trees.

15 Sec. 6. Section 427C.12, Code 2015, is amended to read as
16 follows:

17 **427C.12 Application — inspection — continuation of**
18 **exemption — recapture of tax.**

19 1. It shall be the duty of the ~~The~~ assessor to ~~shall~~ secure
20 the facts relative to a fruit-tree and or forest reservations
21 reservation by taking the sworn statement, or affirmation, of
22 the owner or owners making application under this chapter, and
23 to. The assessor shall make a special report to the county
24 auditor of all areas established as fruit-tree and forest
25 reservations made in the county under the provisions of this
26 chapter.

27 ~~2. The board of supervisors shall designate the county~~
28 ~~conservation board or the assessor who shall inspect the~~
29 ~~area for which an application is filed for~~ An application to
30 establish an area as a fruit-tree or forest reservation tax
31 ~~exemption before the application is accepted. Use of aerial~~
32 shall not be accepted until all of the following applies:

33 a. The county assessor or the county conservation board,
34 as designated by the county board of supervisors, inspects the
35 area and determines that it complies with the requirements

1 of this chapter. Aerial photographs may be substituted for
 2 an on-site inspection when appropriate. ~~The application can~~
 3 ~~only be accepted if it~~ Upon request by the county assessor or
 4 county conservation board, the fence viewers for the township
 5 where the area is located must report whether the area's owner
 6 or owners have participated in erecting and maintaining a
 7 partition fence as required in chapter 359A in order to prevent
 8 any livestock kept on adjacent land from trespassing onto the
 9 area pursuant to section 427C.10. The fence viewers may enter
 10 onto the area or adjacent area in the same manner as if the
 11 owner or owners of the area had made a complaint under chapter
 12 359A. The application shall not be accepted if the fence
 13 viewers determine any of the following apply:

14 (1) A partition fence has not been erected as required in
 15 section 359A.1A.

16 (2) A partition fence that has been erected is not a lawful
 17 fence as required in section 359A.18 or is not a tight fence as
 18 required in sections 359A.19 or 359A.20.

19 (3) An existing partition fence is not maintained or has
 20 not otherwise been kept in good repair throughout the year as
 21 required in chapter 359A.

22 (4) The fence viewers are determining a controversy
 23 regarding the erection or maintenance of a partition fence as
 24 provided in section 359A.22.

25 (5) An order has been issued by fence viewers against the
 26 owner or owners under section 359A.6 or an order has been
 27 issued by fence viewers or by a board of supervisors under
 28 section 169C.6.

29 (6) Livestock as described in section 427C.10 habitually
 30 trespass onto the area as described in section 169C.6.

31 b. The area meets the criteria established by the natural
 32 resource commission to be a fruit-tree or forest reservation.
 33 ~~Once the~~

34 3. a. Except as otherwise provided in paragraph "b", once
 35 an application has been accepted, the area shall continue to

1 receive the tax exemption during each year in which the area is
2 maintained as a fruit-tree or forest reservation without the
3 owner or owners having to refile an application.

4 b. Upon evidence that the owner or owners of the area are
5 not participating in erecting or maintaining a partition fence
6 in order to prevent livestock from trespassing from adjacent
7 land where such livestock are kept, the county assessor may
8 require the owner or owners to refile the application in the
9 succeeding year in the same manner as an initial application in
10 subsection 2. The county auditor may require that the owner or
11 owners refile the application for each succeeding year until
12 the fence viewers are satisfied that the requirements set forth
13 in subsection 2 are being satisfied.

14 4. If all or part of the property area is sold or
15 transferred, the seller shall notify the buyer that all, or
16 part of, the property area is in established as a fruit-tree
17 or forest reservation and subject to the recapture tax
18 provisions of this section. The tax exemption shall continue
19 to be granted for the remainder of the eight-year period for
20 fruit-tree reservation and for the following years for forest
21 reservation or until the property area no longer qualifies as a
22 fruit-tree or forest reservation. The area may be inspected
23 each year by the county conservation board or the assessor to
24 determine if the area is maintained as a fruit-tree or forest
25 reservation.

26 5. If the area is not maintained or is used for economic
27 gain other than as a fruit-tree reservation during any year of
28 the eight-year exemption period and any year of the following
29 five years or as a forest reservation during any year for which
30 the exemption is granted and any of the five years following
31 those exemption years, the assessor shall assess the property
32 area for taxation at its fair market value as of January 1
33 of that year and in addition the area shall be subject to a
34 recapture tax. However, the area shall not be subject to the
35 recapture tax if the owner, including one possessing under

1 a contract of sale, and the owner's direct antecedents or
 2 descendants have owned the area for more than ten years. The
 3 tax shall be computed by multiplying the consolidated levy for
 4 each of those years, if any, of the five preceding years for
 5 which the area received the exemption ~~for fruit-tree or forest~~
 6 ~~reservation times~~ multiplied by the assessed value of the area
 7 that would have been taxed but for the tax exemption. This tax
 8 shall be entered against the property on the tax list for the
 9 current year and shall constitute a lien against the property
 10 in the same manner as a lien for property taxes. The tax when
 11 collected shall be apportioned in the manner provided for the
 12 apportionment of the property taxes for the applicable tax
 13 year.

14 Sec. 7. EFFECTIVE DATE. This Act takes effect January 1,
 15 2016.

16 Sec. 8. APPLICABILITY. This Act applies to property taxes
 17 due and payable in fiscal years beginning on or after July 1,
 18 2016.

19 EXPLANATION

20 The inclusion of this explanation does not constitute agreement with
 21 the explanation's substance by the members of the general assembly.

22 BILL'S PROVISIONS. This bill requires that the owner of
 23 land seeking to have the area classified as a fruit-tree or
 24 forest reservation (reservation) exempt from property taxes
 25 participate in erecting and maintaining a partition fence that
 26 borders adjacent land, if the owner of the adjacent land keeps
 27 livestock there. The county assessor or county conservation
 28 board, as designated by the county board of supervisors, may
 29 request an inspection performed by the appropriate township
 30 trustees acting as fence viewers. The fence viewers must
 31 determine whether any partition fence is required to be erected
 32 to keep livestock from trespassing onto the area, that any
 33 erected fence complies with Iowa's fence law (Code chapter
 34 359A), and that the livestock are not habitually trespassing
 35 onto the area (Code chapter 169C). After the tax exemption

1 is granted, the fence viewers may be requested to make a new
2 inspection to determine whether the exemption should continue
3 in a subsequent year. The bill takes effect January 1, 2016,
4 and applies to property taxes due and payable for fiscal years
5 beginning on or after July 1, 2016.

6 BACKGROUND — RESERVATIONS. A fruit-tree or forest
7 reservation is granted a 100 percent exemption from property
8 taxation. However, it cannot be used to keep livestock and
9 cannot be used for economic gain (Code section 427C.10). It
10 also must meet the criteria established by the natural resource
11 commission (Code section 427C.12). A fruit-tree reservation
12 must not be less than one and not more than 10 acres and a
13 forest reservation cannot be less than two acres (Code section
14 427C.2). A fruit-tree reservation may be exempt from property
15 taxes for eight years (Code section 427C.7). There is not a
16 time limitation for a forest reservation exemption.

17 BACKGROUND — IOWA FENCE LAW AND LIVESTOCK TRESPASS. An
18 owner of land must participate in erecting and maintaining a
19 partition fence or contribute to its erection or maintenance,
20 upon receiving a written request by the owner of adjacent land
21 (Code section 359A.1A). There are a number of different types
22 of fences, including a lawful fence (Code section 359A.18) and
23 a tight fence (Code sections 359A.19 and 359A.20) designed to
24 keep livestock from trespassing onto neighboring land. Fence
25 viewers may intervene by deciding controversies (Code section
26 359A.3) and may issue orders to erect or maintain a partition
27 fence (Code sections 359A.6 and 359A.8). Special remedies are
28 available to neighbors suffering from the habitual trespass of
29 livestock (Code section 169C.6). In order for trespass to be
30 considered habitual, livestock must stray onto neighboring land
31 on three or more separate occasions within a 12-month period.